LIVESTOCK FINANCIAL PROTECTION BOARD
2013/14 ANNUAL REPORT

TABLE OF CONTENTS

- Chair's Message
- Overview/Mandate
  - The Fund
  - Protection for producers
  - Protection for Licensed Dealers
- Board appointments
  - Board Staff and Key Activities
- Description of activities over the year
- Analysis of operational and financial performance
- Discussion of performance targets
- Appendices
  - History of claims
  - History of Claims Recovered
  - Audited Financial Statements

Chair's message

November 6, 2013

The Honourable Jeff Leal
Minister, Agriculture, Food and Rural Affairs
77 Grenville St. 11th Floor,
Toronto, Ontario M7A 1B3

Dear Minister

Pursuant to section 6(1) of the *Farm Products Payment Act*, I am pleased to submit a report describing the work of the Livestock Financial Protection Board for the year ending March 31, 2014, for tabling in the Legislature. This report has been prepared in compliance with the Agency Establishment and Accountability Directive.

As a Board, we continue to focus on administering the Fund for Livestock Producers; adjudicating claims; granting or refusing the payment of all claims and recovering any money to which the Board is entitled.

As Fund administrator, one of our goals is to ensure long-term sustainability of the Fund. Once again the Fund's investment strategy performed well and helped the Fund maintain both a healthy and stable funding ratio. The following are some highlights for the 2013/14 fiscal:

- The Fund remained actuarially sound with a balance of $7.3 million ($2.8 million above the actuarial target of $4.5 million)
- Investment income of $245,792
- Rate of return on investment of 3.54 percent
- Debt recovery rate increased to 34.91% from 32.0 % in 2013

In the 2013/14 fiscal the Board received 1 claim for compensation from livestock sellers as a result of the failure of one livestock dealer. The payout for this claim was $883.62. The Board was able to adjudicate the claim in a timely manner: it took 30 days to reach a decision; 30 days less than the stated goal to process the claim.

Respectfully submitted,

Robert Brander

Bob Brander
Chair, Livestock Financial Protection Board

1. Overview/Mandate

The Ontario Beef Cattle Financial Protection Program (Program) was established in 1982 to provide compensation to sellers[1] in the event that a buyer (packing plant operators, abattoir operators, auction market operators, country dealers and cooperatives) defaults on a payment.[2]

The Program has two components: the annual licensing of dealers under the *Livestock and Livestock Products Act* (LLPA) and the administration of the compensation fund established under the *Farm Products Payment Act* (FPPA).

The Ministry of Agriculture, Food and Rural Affairs is responsible for the licensing of dealers. The Livestock Financial Protection Board's (Board) primary role is to administer the fund for livestock producers (Fund). The Board is established under the authority of section 3 of O. Reg. 560/93 – Fund for Livestock Producers, made under the FPPA. The Board is classified as a Trust Agency by the Management Board of Cabinet (Trust Agencies administer funds and/or other assets for beneficiaries named under statute).

The functions of the Board are outlined in section 4(1) of the FPPA as follows:

i. to administer its Funds;

ii. to investigate all claims made to it under the FPPA and to determine the extent of their validity;

iii. to grant or refuse the payment of all claims or any part thereof and determine the amounts and manner of payment; and

iv. to recover any money to which it is entitled under the FPPA by suit in a court of competent jurisdiction or otherwise

There are 186 licensed dealers and approximately 19,000 beef farmers (including milk producers who market veal calves, bulls, and culled dairy cattle for slaughter purposes) subject to the FPPA and the LLPA

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[1] Sellers include both producers and licensed dealers. Dealers licensed under the *Livestock and Livestock Products Act* who sell livestock are designated as producers for the purposes of clause (d) of the definition of "producer" in section 1 of the Act, but the designation is only in respect of sales of livestock by the dealers to: (a) other dealers licensed under the *Livestock and Livestock Products Act*; or (b) other producers.

[2] The buyer could also be a producer, where the claimant is a licensed dealer.

The Fund for Livestock Producers

All money to which the Board is entitled is paid into the Fund. Contribution to the Fund is based on a fixed rate per head of livestock in a transaction. Under O. Reg. 321/11, a fee of five cents per head sold is payable to the Board, unless the sale is on consignment, in which case the five cent fee is owed by each of the consignee and consignor.

Fees are remitted by the buying dealer on behalf of the producer when the sale is made directly by a producer, by the selling dealer when the sale is by a dealer, and by the consignee on behalf of the consignor and on their own behalf, where the sale is on consignment. Fees are payable on or before the 15th day of the month following the month of sale unless less than 1,000 head are sold or purchased annually, in which case the fee is payable annually.

The Fund is used to:

- Provide compensation to qualified sellers in the event that certain buyers default on payment.
- Offset the cost of determining financial responsibility of dealers as part of the licensing component of the Program.
- Pay Board expenses (other than for the remuneration of those of its employees who are public servants employed under Part III of the *Public Service of Ontario Act, 2006*).[1]
- Pay for professional, technical or other assistance to or on behalf of the Board.

A claim may be made if a seller hasn't been paid according to the timelines in the regulations, if the buyer has ceased operation, or if the buyer's assets have been placed in the hands of a receiver or trustee. O. Regulation 560/93 lays out discretionary grounds under which a claim may be denied. Examples of grounds for refusing payment include the claimant extending credit to the buyer; the Director under the LLPA not being notified promptly where payment was not received on time, and the claim not being submitted on time.

The Program provides:

Protection for Producers:

If the Board decides that a claim from a producer made in respect of a dealer is valid, the Board pays 95 percent of the portion of the claim that it recognizes as valid.

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[1] Legal and investigative support are currently provided and paid for by the ministry. The ministry also covers Board members' remuneration (per diem, meal and travel).

Protection for Licensed Dealers:

Where an approved claim relates to a licensed dealer selling to a producer or feeder cattle finance co-operative who defaults on payment, compensation is 85 per cent of the portion of the claim that the Board recognizes as valid, up to a maximum of $125,000. In these cases, there is no compensation for claims of less than $5,000. Where an approved claim relates to a licensed dealer selling to another licensed dealer, the Board pays 95 percent of the portion of the claim that it recognizes as valid

2. Board Appointments

Section 4(1) of O. Reg. 560/93 requires that the Board be composed of at least five members consisting of one member each from Beef Farmers of Ontario (BFO), Canadian Meat Council (CMC) and the operators of community sales under the *Livestock Community Sales Act*, together with such other members as the Minister considers advisable.

The regulation also requires the Minister to appoint a Chair and a Vice Chair from among its members. The Board operates at arm's length from the Government but is accountable to the Government in exercising its mandate. The members of the Board are appointed by the Minister. These individuals, in addition to administering the Fund, draw upon their expertise in the livestock industry in hearing and adjudicating cases before them. The Board may also call upon technical experts and professionals to provide assistance.

As at March 31, 2014, there were six Board members which included a Chair and Vice Chair. The CMC position has been vacant since 2008, and while the Board has been in contact with the CMC with regard to having a member appointed, to date the CMC has not submitted any candidates.

The table below shows the names of appointees for fiscal 2013/14 and the term of their appointments.

Name	Organization	Date Appointed	Expiry Date
Mr. Robert Brander Chair	Beef Farmers of Ontario	April 1, 1992	March 16, 2015
Mr. Larry Witzel Vice Chair	Ontario Livestock Auction Markets Association	April 17,2007	October 28, 2015

Name	Organization	Date Appointed	Expiry Date
Vacant	Ontario Independent Meat Packers		
Mr. Paul Sharpe	Beef Farmers of Ontario	November 30, 2007	November 29, 2016
Mr. Kevin McArthur	Ontario Livestock Dealers Association	July 18, 2011	July 17, 2017
Vacant	Canadian Meat Council		
Mr. Murray Allen	Dairy Industry	September 5, 2008	September 4, 2017
Ms. Jennifer Haley	Veal Industry	October 6, 2008	October 5, 2016

Five members of the Board constitute a quorum for transacting the Board's business. The Board is made up of industry representatives from a wide range of livestock industry sectors. This broad industry knowledge is important in understanding the clientele and the claim files.

Board Staff and Key Activities

In the 2012/13 fiscal year the Ministry undertook a competitive procurement process to secure a delivery agent to provide the:

- Ministry with assistance in administering the licensing component of the Ontario Beef Cattle Financial Protection Program; and
- Board with fund investment, administrative and secretariat support.

Beef Cattle Financial Protection Program Inc. (BCFPPI) was ultimately the successful proponent. The tripartite contract entered into between the Ministry, the Board and BCFPPI is for a three year term. BCFPPI is a not-for profit corporation governed by a Board of Directors. The Board of BCFPPI has representatives from the Beef Farmers of Ontario, Ontario Livestock Dealers Association, and Ontario Livestock Auction Markets Association.

BCFPPI acts as the Board's administrator and is responsible for assisting the Board in preparing its annual report, business plan and other documentation required for compliance with the Memorandum of Understanding (MOU) and the Agency Establishment and Accountability Directive.

The Board has delegated day to day management of the Fund to BCFPPI. This includes receiving and depositing check-off fees; preparing monthly, quarterly and annual financial statements, preparing documentation for annual audits and investment of the Fund. The Fund is invested according to guidelines set out in the MOU.

The Board continues its arrangement for the provision of secretariat and adjudication support. The continuity that this arrangement provided to the Board in 2013/14 continues to improve the response time in dealing with claims. This support included but was not limited to:

- Overseeing the effective processing of claims and scheduling meetings to consider claims;
- Recording minutes of meetings and distributing same;
- Preparing documentation relating to the adjudication of cases; and
- Scheduling hearings and drafting decision letters as directed by the Board.

Legal counsel:

The Ministry of the Attorney General provides legal services to the Board. The lawyer assigned to the Board provides the Board with advice, opinions, and other legal assistance in judicial reviews, claim adjudication and recovering monies owed to the Board, and also contributes to the continuing education of Board members.

Investigator:

The Ministry of Agriculture, Food and Rural Affairs Regulatory Compliance Unit provided investigative support. There were 2 claims involving 2 dealers in the 2013/14 fiscal.

3. Description of activities over the year

The Board activities are geared towards fulfilling its mandate. The Board has two types of meetings: regular meetings and adjudicatory meetings and hearings.

- ***Regular meetings*** are held to do training, approve the business plan, annual report, and year-end financial statements and for general Fund administration. These are held annually.
- ***Adjudicatory meeting and hearings*** are held to consider applications for payments from the Fund. These are ad hoc and depend on whether or not there is a claim on the Fund.

There were two Board meetings in the 2013/14 fiscal year. Both meetings dealt with a claim as well as reviewing and approving the Business Plan, Annual Report and Audited Financial Statements.

Fund Management/Administration:

The Board is responsible for the overall governance of the Fund. The primary purpose of the Fund is to compensate sellers in the event of a default by a buyer. The Board's main objective when managing investment capital is to safeguard its ability to remain as a going concern so that it can continue to deliver financial protection to livestock sellers. As such the Board's investment

policy focuses on ensuring security, liquidity and maximization of investment income. In addition, there are restrictions in place so that only authorized investments are undertaken (the Fund can only be invested in instruments permitted by the MOU).

In order to ensure liquidity and manage interest rate risk, the Fund's investments mature at various points in time. Currently the Fund is invested in short and long term fixed interest income type securities including a first mortgage and fixed term GIC's ranging between 12 to 48 month terms. The Board's responsibility as Fund administrator includes:

- establishing or approving all policies as required;
- approving payments from the Fund;
- reviewing, adopting and monitoring the strategic planning process
- approving the annual audited financial statements of the Fund;
- reviewing and approving the Board's operating budget;
- ensuring policies and processes are in place for the identification of risks and reviewing and approving risk management strategies; and
- ensuring that an actuarial review of the Fund is conducted when required.

As part of its ongoing efforts to ensure the solvency of the Fund, the MOU requires the Board to undertake an actuarial review, at any time, in order to ensure the actuarial soundness of the Funds. The Board had an actuarial study completed in June 2010 by Ernst & Young. The conclusion of the review was that the Fund is in a strong financial position and that a Fund balance of approximately $4.5M would cover net claims with 99% confidence.

Claims Investigation and Adjudication:

The process begins when the seller files a claim with the Board or indicates an intention to file a claim. Once a complaint is received an application form is sent to the seller. Once the claim application is received it is investigated by the Regulatory Compliance Unit in the Food Safety and Traceability Programs Branch. When the investigation is completed an investigative report is given to the Board. The Board conducts an in-depth analysis, which may involve legal services, and either makes a final decision or offers an opportunity for the parties to make submissions or attend a hearing before making its final decision.

If the Board offers an opportunity for a hearing, and a hearing is requested by one of the parties, a Notice of Hearing is mailed to the parties stating the time, date and location of the hearing. The Board works to adjudicate cases within 60 days of receiving the file from the investigators. Where a hearing is held, it may take longer to make a decision. After the claims adjudication

process is completed, the Board sends a decision letter to the claimants and buyer. Appendix 1 shows the history of claims to the Fund up to March 31, 2014.

Recovery of Money Owed:

The Board, through legal counsel and the Administrator, work to recover money owed to the Board. Since inception, the Board has paid out $10,160,810 and has recovered $3,546,324 for a 34.91% recovery rate. At the end of last fiscal year the Board's recovery rate was 32.02 %; an improvement of 2.89% (See Appendix 2 for recovery history). As per the MOU, in 2010/11 a recovery policy was developed and is currently in force. The recovery policy states that the Board will make every reasonable attempt to recover monies that is owed to the Board. Its objectives are to utilize both Ministry and external legal staff in recovering as much outstanding debt as is reasonably achievable using a variety of tools and options. There are currently two active debt recovery files. It is not known at this time what yield, if any, those two files will produce.

4. Analysis of Operational and Financial Performance

The Board administers the compensation Fund established under the FPPA. Should a licensed dealer or producer default, the Board adjudicates any claim(s) and determines the payment (if any) to be made from the Fund.

A total of 2 claims were received by the Board in 2013/14 fiscal. One claim was withdrawn The Board made a decision on the other claim in the 2013/14 fiscal. The detail of the claim adjudicated is as follows:

- One (1) claim was paid in full totaling $ 883.62
- The Board took 30 days from when the investigative report was received to make a decision on the claim. This was thirty days less than the goal set in the business plan. The Board benefited from work done in 2009/10 to streamline the claims adjudication process. This included a request to the Minister to re-appoint the Chair to ensure board continuity and hiring a secretary for the provision of secretariat and adjudication support. For the 2012/2013 year, the average number of days to adjudicate a claim was 31 days.
- This one small claim had no significant impact on the fund.

The balance of the fund at the beginning of the fiscal year was $6,876,848 and at the end of fiscal 2013/14 it was $7,347,625. The Board recovered a total of $291,809.13 in fiscal 2013/14.

Fund Performance and Investment Strategy:

The Board's main objective when managing investment capital is to safeguard its ability to remain as a going concern so that it can continue to deliver financial protection to qualified livestock sellers. Investment income is one important source of revenue for the Fund.

The investment strategy flows from the investment guidelines set out in the MOU, which includes some investments allowed under repealed provisions of the *Trustee Act.* It is further guided by Board's policy which requires 60% in long term investments and 40% in short and medium term investments. When short or medium term investments mature, research is done on the variety of rates available from 30 day to 2 year term investments. If it appears that interest rates are generally rising then a shorter maturity date would be chosen to take advantage of potentially higher rates at maturity. If rates appear to be falling then a longer maturity would be selected.

Over the last seven years, the ability to invest in a high security first mortgage at 5% produced returns in excess of $55,000 more per year than any other options available on the market that the Board can invest in under its guidelines.

The Fund's asset mix is made up of:

Cash, short and medium term investments:

- The Fund's short term investment is one GIC issued by a domestic financial institution that matures on February 2015 that earns 1.90 % per annum. Cash and short term investments holdings at year end were $2,025,088 (29.14 % of total investments, up from 16.82 % the previous year). The increase occurred primarily because of the lattering strategy of short and medium term investments.
- Guaranteed Investment Certificate: There is one GIC in the amount of $1,252,457 issued by a domestic financial institution with maturity date of February 2016 that earns 1.56 % annually.
- Short and medium term investments are 45 percent of the Boards investment

Long term investment:

The Fund's long term investment consist of real estate in the form of a $4 million first mortgage on development lands in the city of Kitchener bearing interest at 5% payable semiannually. The $4 million is approximately 58% of the Fund's total investment. Since 2004, when the Board made its initial investment in real estate, the portfolio has generated an average annual return of 4.06%. The year prior the portfolio's yield was 3.22%. This represents an increase of $55,000 per year during a low interest environment.

Interest income on these investments totaled $245,792 for 2013/14. In 2012/13 investment

income was $244,642 and in 2011/12 it was $269,319. The small decrease between 13/14,12/13 and 11/12 was due primarily to a decrease in total fund investment, caused by several large claim payouts, and a small decrease in short term rates.

The Board's strategic investment mix was instrumental in minimizing the impact of the economic downturn on its investments. The Board considers its investment in real estate to be a relatively safe investment that has generated great returns with little to no risk. Diversification among different assets, such as the mortgage, is the Board's key strategy to reduce risk.

Contributions:
The amount of money flowing into the Fund from check-off fees was $112,524, compared to $106,068 in 2012/13; an increase of $6,456. As at March 31, 2014, the Fund balance stood at $7,347,626. This is an increase of $470,777 from March 31, 2013.

Board expenses:
The Board is authorized to use the producer fund to:

- Pay valid producer claims (which are recoverable from the defaulting dealers);
- Offset the cost of determining financial responsibility (one component of incensing);[2]
- Pay Board expenses; and
- Pay for professional, technical or other assistance to or on behalf of the board.

Total Board administration expense, (excluding claims payment) in 2013/14 was $178,464 (this was $5,186 under budget primarily due to fewer claims and less adjudication administration support). The total includes the costs incurred in the determination of financial responsibility of livestock dealers and other Board administration and adjudication support.

Financial position:
The audited financial statement shows a surplus of $7,347,626 at year end (see Appendix 3: audited financial statements).

The table below shows the budget to actual and the variance for 20011/12 fiscal, 2012/13 fiscal and the 2013/14 fiscal.

[2] Under the financial protection program, all dealers must be licensed annually, with licensing dependent upon a positive assessment of financial responsibility by the program administration. Section 7(2) of the FPPA allows the Board to use the Fund to pay the whole or any part of the costs incurred in determining financial responsibility.

	Budget 2011/12	Actual 2011/12	Variance 2011/12	Budget 2012/13	Actual 2012/13	Variance 2012/13	Budget 2013/14	Actual 2013/14	Variance 2013/14
Opening Equity		$7,122,407			$7,311,130			$6,876,848	
Fees	$110,000	$105,345	-$4,655	$106,000	$106,068	$68	$106,000	$112,525	$6,525
Interest	$285,400	$269,319	-$16,081	$245,000	$244,642	-$358	$250,000	$245,792	-$4,208
Recoveries	$100,000	$216,541	$116,541	$561,000	$561,382	$382	$35,000	$291,809	$256,809
Claims paid	$0	$285,912	$285,912	$0	$1,218,609	$1,218,609	$250,000	$883	-$249,117
Admin Expense	$111,249	$116,571	$5,322	$133,528	$127,766	-$5,762	$183,650	$178,464	-$5,186
Closing Equity		$7,311,130			$6,876,848			$7,347,626	

5. Discussion of performance targets

In its 2013-2016 Business Plan the Board identified key priorities for action. What follows is a brief summary of key accomplishments regarding each of these priorities in the 2013/14 fiscal year. The table below shows the targets achieved/not achieved and actions to be taken.

Objective	Performance Measure	Target	Targets achieved/not achieved and action to be taken
To protect the long term viability of the Fund for livestock producers.	Actuarial study completed at least once every five years or as required	2015	Last actuarial study completed in 2010
	Target Fund balance maintained as per actuarial study	$4.5 million	Achieved fund balance at $7.3 million
	Review investment policy annually	July 2013	Achieved
	Debt collection policy reviewed	2013/14	Reviewed and no changes are recommended
Governance and accountability	Risk management plan reviewed and updated quarterly	Quarterly review	Achieved (reviewed as part of Business Plan) also reviewed quarterly as part of AEAD compliance

Objective	Performance Measure	Target	Targets achieved/not achieved and action to be taken
	Review and approve budget annually	Annual review	Achieved (reviewed as part of Business Plan)
	Quarterly review of financial statements provided by program Administrator	Quarterly	Achieved
	Ensure payment from the Fund is compliant with the FPPA. The compliance approach is focused on preventing inaccurate payments by reviewing payments against requirements set out in the FPPA.	Payments are compliant	Achieved
	Investment activities compliant with MOU, including some now repealed provisions of the *Trustee Act* and other applicable legislation/ directives	Compliant	Achieved
Maintain an adjudication process that is simple, fair and accessible with minimal delays	Number of days from receipt of investigative report until the LFPB makes and issues its decision	60 days	Decisions rendered on average in 30 days. The target was achieved.
	Number of applications for judicial review that were granted by the court	0	Achieved
	Board at quorum	5 or more members appointed	Achieved
	Board succession plan in place	Annual Review	Board reviews annually

Appendix 1: History of Claims up to March 31, 2014

Year	# of Claims Received	# of Claims Paid	Amount Claimed	Amount Paid
1982	11	4	72,039.50	5,357.90
1983	12	5	377,713.20	135,476.30
1984	4	1	645.90	581.30
1985	23	11	287,441.00	258,696.90
1986	3	0	9,475.30	-
1987	142	15	1,813,633.50	1,451,326.50.
1988	126	77	833,111.20	567,861.20
1989	8	5	66,882.60	46,715.50
1990	31	23	1,352,067.60	1,183,260.60
1991	2	0	9,810.80	-
1992	1	0	7,500.00	-
1993	1	0	-	-
1994	28	20	825,975.30	742,852.70
1995	2	1	12,110.70	10,899.60
1996	34	34	193,869.80	174,482.80
1997	2	0	17,852.50	-
1998	7	6	165,370.60	138,723.50
1999	1	1	11,384.60	7,969.20
2000	48	47	2,203,876.00	1,977,548.00
2001	142	125	995,275.60	807,618.80
2002	0	0	-	-
2003	17	8	3,782,026.70	210,319.00
2004	40	19	337,875.50	296,894.40
2005	10	6	211,152.40	70,842.90
2006	0	0	-	-
2007	0	0	-	-
2008	0	0	-	-
2009	18	1	703,100.80	18,727.90
2010	1	0	654,105.50	-
2011	38	22	2,230,621.71	549,251.11
2012	264	172	$ 1,535,925,.68	$ 285,911.94
2013	61	61	$ 1,225,030.94	$ 1,218,609.00
2014	1	1	**$ 883.62**	**$ 883.62**
Total	1,114	710	**20,036,758.55**	**10,160,810.67**
Recovered				**3,546,324.23**
Net Paid Out				**6,614,486.34**
Fund Balance				**$7,347,625.86**

Appendix 2: History of Claims Recovered

Year	Claims Recovered
Prior to 1998	$ 1,135,254
1998	3,302
1999	-
2000	435
2001	385,000
2002	0
2003	39,760
2004	78,977
2005	119,950
2006	-
2007	350,000
2008	-
2009	-
2010	31,044
2011	332,869
2012	216,541
2013	561,382
2014	291,809.
Total Recovered	**$ 3,546,324**

Appendix 3: Audited financial statements